



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,196	01/22/2001	Ronald J. Lebel	047711-0221	1919

90319 7590 03/24/2011

Foley & Lardner LLP
555 South Flower Street
Suite 3500
Los Angeles, CA 90071-2411

EXAMINER

DESANTO, MATTHEW F

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

03/24/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD J. LEBEL, VARAZ SHAHMIRIAN, DANIEL H.
VILLEGAS, DAVID Y. CHOY, PHILIP T. WEISS, and
PAUL M. MEADOWS

Appeal 2009-010118
Application 09/768,196
Technology Center 3700

Before WILLIAM F. PATE, III, STEFAN STAICOVICI, and
FRED A. SILVERBERG, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Ronald J. Lebel et al. (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's final decision rejecting under 35 U.S.C. § 103(a) claims 6-10 and 12-29 as unpatentable over Tune (US 5,630,710, issued May 20, 1997), Goedeke (US 5,904,708, issued May 18, 1999), and Moon (US 6,211,858 B1, issued Apr. 3, 2001); claim 11 as unpatentable over Tune, Goedeke, Moon, and Er (US 6,185,461 B1, issued Feb. 6, 2001); and claims 6-29 as unpatentable over Causey (US 6,641,533 B2, issued Nov. 4, 2003) and Moon. Claims 1-5 have been canceled.

Appellants' representative presented oral argument on March 8, 2011. We have jurisdiction over this appeal under 35 U.S.C. § 6.

THE INVENTION

Appellants' invention relates to a medical system including a medical device 2 and a communication device 32 having programming and communication features. Spec. 1, ll. 11-15 and figs. 1A and 2.

Claim 12 is representative of the claimed invention and reads as follows:

12. A medical system, comprising:
 - a) an ambulatory medical device (MD) comprising MD electronic control circuitry that further comprises at least one MD telemetry system and at least one MD processor that controls, at least in part, operation of the MD telemetry system and operation of the medical device, wherein the medical device is configured to provide a treatment to a body of a patient or to monitor a selected state of the body; and
 - b) a communication device (CD) comprising CD electronic control circuitry that further comprises at least one CD telemetry system and at least one CD processor that controls, at least in part, operation of the CD telemetry system and operation of the

communication device, wherein the CD telemetry system sends messages to or receives messages from the MD telemetry system using RF transmissions,

wherein the CD display is controlled to depict a plurality of patient programmable options on at least one first menu and wherein at least one of the patient programmable options may be enabled and disabled at different times from a second menu such that when disabled the at least one patient programmable option is no longer displayed on the at least one first menu as an option while at least one enabled option is displayed on the at least one first menu.

SUMMARY OF DECISION

We AFFIRM.

ANALYSIS

The obviousness rejection over Tune, Goedeke, and Moon

The Examiner found that the combined teachings of Tune and Goedeke disclose all the limitations of independent claims 12 and 29 with the exception of a display that depicts a plurality of patient programmable options on a first menu (as per claim 12) or a first display screen (as per claim 29) where the at least one of the patient programmable options may be enabled or disabled at different times from a second menu (second display screen)² such that when disabled it is no longer displayed on the first menu (first display screen) while at least one enabled option is displayed on the first menu (first display screen). App. Br., Claims Appendix. The Examiner further found that Moon discloses a screen display for a PDA system that permits a user, in a first screen, to remove or add certain

² Non-parenthetical nomenclature refers to the language of claim 12, whereas the parenthetical nomenclature refers to the language of claim 29.

applications (meters) that are to be shown in a second screen. Ans. 9.

Hence, according to the Examiner, Moon discloses a second menu that controls the “meters” displayed on a first menu. Ans. 10.

Appellants first argue that neither Tune nor Goedeke discloses a second menu for enabling or disabling at least one of a plurality of programmable options displayed on a first menu. App. Br. 5. Appellants further argue that, “the rotating display of meters [in Moon] is not a menu of patient programmable options” because “[t]he term ‘menu’ necessitates an ability to select menu item[s].” App. Br. 8. *See also*, Reply Br. 3, 4. With respect to the teachings of Moon, Appellants also argue that although in Moon a meter is removed from the display, it is not disabled, as required by independent claims 12 and 29, because Moon specifically teaches that the meter continues to run in the background. App. Br. 8. *See also*, Moon, col. 2, ll. 40-43.

At the outset, we find Appellants’ arguments unpersuasive because Appellants’ contentions appear to attack the teachings of Tune, Goedeke, and Moon individually, rather than the combination of Tune, Goedeke, and Moon. Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). In this case, the Examiner found, and we agree, that Tune discloses a programmable infusion pump in which a user can program a plurality of infusion parameters (programmable options) such as reservoir volume, concentration, KVO Rate, PCA dose, etc. Ans. 5. *See also*, Tune, col. 3, ll. 29-44 and figs. 25-30. We further agree with the Examiner that Moon discloses a first window that displays information, *i.e.*, meters, and a second

window for customizing the information that appears in the first window.

Ans. 10. *See also*, Moon, col. 6, ll. 50-55; col. 7, ll. 42-65; and figs. 5 and 7.

We find that if a person of ordinary skill in the art were to implement the customization window of Moon in the programmable infusion pump of Tune, such a person would have added a customization window to the set-up screen 520 of Tune so as to permit a user to add or remove at least one of a plurality of infusion parameters (programmable options) such as reservoir volume, concentration, KVO Rate, PCA dose, etc. *See KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007) (“A person of ordinary skill is also a person of ordinary creativity, not an automaton.”). We further find that when a user would use the screen of Moon to remove at least one of a plurality of the infusion parameters (programmable options) of Tune, since the removed infusion parameter would not appear on the set-up screen 520 of Tune, the user would not be able to program the removed infusion parameter, and as such the removed infusion parameter would be “disabled³,” as called for by claims 12 and 29.

Moreover, we note that the combination of Tune and Moon does not remove the programmable infusion parameters of Tune, but rather adds the customization window of Moon, and thus implementation of Moon’s teaching to use a customization window in the programmable infusion pump of Tune, meets the limitations of a display that depicts a plurality of patient programmable options on a first menu (first display screen) where the at

³ An ordinary and customary meaning of the term “disable” is “to make incapable or ineffective.” MERRIAM WEBSTER’S COLLEGIATE DICTIONARY (10th Ed. 1997).

least one of the patient programmable options may be enabled or disabled at different times from a second menu (second display screen) such that when disabled it is no longer displayed on the first menu (first display screen) while at least one enabled option is displayed on the first menu (first display screen).

Finally, Appellants appear to argue that it would not have been obvious to combine the display screen of Moon's PDA system with Tune and Goedeke because they are from different technologies. App. Br. 9. This argument is not persuasive. "When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability." *KSR* at 417. The Examiner reasons that such combination would have been obvious "to delete any unused or unwanted options on the screen since this 'clogs' the screen." Ans. 6. Appellants have not explained why any differences in technologies between Moon, Tune, and Goedeke are of such a nature as to have dissuaded a person of ordinary skill in the art at the time of Appellants' invention from providing the customization display screen of Moon's PDA system to the programmable infusion pump of Tune and Goedeke, as reasoned by the Examiner.

In conclusion, for the foregoing reasons, we shall sustain the rejection of claims 12 and 29 over the combined teachings of Tune, Goedeke, and Moon.

With respect to the rejection of claims 6-10 and 13-28 over the combined teachings of Tune, Goedeke, and Moon, Appellants do not present any additional arguments. App. Br. 9, 10. Accordingly, the rejection of

claims 6-10 and 13-28 over the combined teachings of Tune, Goedeke, and Moon is likewise sustained.

The obviousness rejection over Tune, Goedeke, Moon, and Er

Regarding the rejection of claim 11 over the combined teachings of Tune, Goedeke, Moon, and Er, Appellants do not present any additional arguments. App. Br. 10. Accordingly, we shall also sustain the rejection of claim 11 over the combined teachings of Tune, Goedeke, Moon, and Er.

The obviousness rejection over Causey and Moon

Regarding the rejection of claim 6-29 over the combined teachings of Causey and Moon, Appellants make similar arguments as those presented with respect to the rejection of independent claims 12 and 29 over the teachings of Tune, Goedeke, and Moon. App. Br. 10, 11. Accordingly, for the reasons set forth *supra*, we shall likewise sustain the rejection of claims 6-29 over the combined teachings of Causey and Moon.

SUMMARY

The decision of the Examiner to reject claims 6-29 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

Appeal 2009-010118
Application 09/768,196

mls

FOLEY & LARDNER LLP
555 SOUTH FLOWER STREET
SUITE 3500
LOS ANGELES, CA 90071-2411